ground for refusing relief, except where such lapse of time is evident of an abandonment of the right on Plaintiff's part or where it has actually prejudiced the Defendant." It is thus clear that the general *dictum* first quoted does not receive such strict application in India as in England especially in reference to equitable claims, and that such claim may be disallowed on the ground of laches even although the whole period of limitation had not run. Examples taken at random from Rustomji are: page 161 "Laches and Acquiescence: When once the fraud has been discovered it is plaintiff's duty to claim relief promptly and he is not entitled to any definite period such as 12 years from the date when it was discovered." Again at page 384 *re* Art. 43 "(To compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets: . . . 3 years): Article 43 gives 3 years but the suit may be barred earlier on the ground of acquiescence and laches." But the passage in Rustomji which appears to settle the point beyond question as it deals with this particular kind of suit under this particular Art. 97 (Indian Art. 120) is given at page 587:—

"Declaratory suits: Laches and Acquiescence—Though a suit for a declaration may be within the law of limitation the Court has a very wide discretion to refuse the declaration (e.g. on the ground of laches or acquiescence), as the granting of declaratory relief is always in the discretion of the Court."

Therefore I hold that this general plea of Defendant No. 5 in bar of laches has no application in this suit. Halsbury Volume 13 at page 169 states: "Hence acquiescence depends on knowledge." This *dictum* presumably applies to laches also. I have found however that Plaintiff was in fact aware of her rights so her plea of ignorance is of no avail. The final question therefore is: Was there in fact laches? To constitute this there must be, as stated above both capacity and freedom and I interpret these terms in a wide sense. In Halsbury page 170 it is stated—"Poverty added to other circumstances is a material ingredient in deciding whether laches is to be imputed to a vendor who seeks to avoid a sale; but by itself it does not prevent a waiver of a right." And again a few lines lower: "Moreover there is no laches until the person entitled is ascertained." It is thus apparent that laches in every case is a question of circumstances including personality. This finding might rightly be made against a person of business experience of sufficient means and having easy access to legal advice; and yet be quite inappropriate as applied to a poor and totally inexperienced woman of failing if not deficient mental powers without access, at least after 1917 to any advice either legal or otherwise—such as approximately was the condition of the plaintiff. I have held that she knew that Lim Ah Chen and other trustees had put forward her claim in December, 1915 and that her claim had failed; inferentially, by the finding of the Registrar that a *t'sip* was not entitled to share. She doubtless also knew that the Tan Ah Loy litigation was still proceeding on this point. For part of the intervening time she was living on public charity. Under these distressing circumstances her action in deferring to take proceedings—even if she could have done so, until the decision of the Privy Council had clearly defined her rights appears to me not only not negligent but prudent—if unfortunately for herself her delay had not overstepped the bounds of limitation. In addition I would again refer to the passage above quoted from Halsbury: "Moreover there is no laches until the person entitled is ascertained." It might well be argued that plaintiff was ascertained as a person entitled to share until the decision of the Privy Council was given. On all these grounds I must agree with the learned trial judge in declining to hold the plaintiff was guilty of laches.

As above stated however I hold that this appeal should be allowed on the ground that plaintiff's claim is barred by limitation.

Appeal allowed.

Solicitors for 1st—4th Appellants—
Presgrave & Matthews.

Solicitors for 5th Appellant—
Hogan & Ivens.

Solicitors for the Respondent—
Adams & Allan.

[ORIGINAL CIVIL JURISDICTION]
MILLS, J.
November 22, 1933.

BAN AIK & COMPANY, ...Plaintiffs.
vs.
TEY YEW CHUAN trading as CHOP CHUAN THYE .....Defendant.

[SINGAPORE SUIT No. 803 of 1933]

Practice—Specially Endorsed Writ—Service out of jurisdiction—Contents of supporting affidavit—Civil Procedure Code, Ss. 3, 54, 106.

A Writ of Summons specially endorsed under section 54 of the Civil Procedure Code may be issued for service on the defendant out of jurisdiction. In an affidavit in support of the application for leave to issue such a writ it is essential under section 106 of the Civil Procedure Code to state, amongst other things, that, in the deponent's belief, the plaintiff has a good cause of action. Omission to testify to a good cause of action is a fatal defect.

APPLICATION before Mills, J. in Chambers for an order to discharge an order of Court dated the 20th day of October 1933 whereby leave to plaintiff was granted to issue the Writ of Summons in the above suit and to serve the same upon the defendant by substituted service at Muar a place out of the jurisdiction of the Court.

C. C. Tan for the Plaintiff.
L. H. Chidson for the Defendant.

Cur. Ad. Vult.

MILLS, J.—In this suit the Court has ordered that a specially endorsed writ of summons may be served out of the jurisdiction.

The defendant seeks to set aside the order.

In the first place he contends that the Court has no authority to make such an order.

In the case of *Anthony* v. *Lawford* (Penang Suit No. 556 of 1921 unreported), Whitley, J. held that such a writ could not be issued: on the other hand, in the case of *Tan Cheng Oon* v. *Low Cheow Hway and others* (1927 Straits Settlements Law Reports, p. 70) Murison, C. J. declined to regard the Penang case as an authority and decided that such a writ may be issued.

Following the decision of Murison C.J., I hold that such a Writ may be issued: apart from the arguments which influenced Murison, C.J. in coming to his decision, it appears to me that there are two reasons for concluding that such a writ may issue.

(a) in Form No. 5 (Writ of Summons for Service out of the Jurisdiction). it is stated that an Indorsement as in Form No. 9 may be made; now Form No. 9 is headed "Special Indorsement of Claim" and gives examples of such special endorsements as are referred to in section 54 of the Civil Procedure Code; hence it is quite clear, in my opinion, that a Special Indorsement of Claim may be made in a Writ of Summons for Service out of the jurisdiction.

(b) if the issue of such a writ is not authorised by the Code, still it is not prohibited, and in that case, under section 3 of the Code, the procedure and practice for the time being in force in the Supreme Court of Judicature in England, is to be followed; according to that procedure and practice a specially endorsed writ may be issued for service out of the jurisdiction (Order 3 rule 7).

In the second place the defendant contends that the plaintiffs' supporting affidavit failed to state that, in the belief of the deponent, the plaintiff has a good cause of action, and that such failure to comply with the requirements of section 106 constitutes a fatal defect.

The plaintiff's affidavit contains, *inter alia*, the following allegations. "The defendant is justly and truly indebted to the Plaintiff....." "The debt is still due and owing": I hold that these allegations do not amount to a statement that, in the belief of the deponent, the plaintiff has a good cause of action: there may be many reasons why the plaintiff may be debarred in law from recovering a debt "still due and owing" from a defendant who is "justly and truly indebted to the plaintiff".

Following the decision in *Vaudrey and others* v. *Nathan* (1928 Weekly Notes p.154), I hold that the omission to testify to a good cause of action is a fatal defect.

It follows, in my opinion, that the order for service out of the jurisdiction must be set aside.

Order accordingly.

Solicitors for the Plaintiff—*Aubrey Davies & Co.*

Solicitors for the Defendant—*Allen & Gledhill.*

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.